

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5162 of 1985

Date of decision: 15-8-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIRITKUMAR K ZANZRUKIA

Versus

EXECUTIVE ENGINEER

Appearance:

MR PH PATHAK for Petitioner

Mr. S. R. Divetia for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

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Learned counsel for the petitioner, during the course of argument, raised issue that termination of service of the petitioner has been made in violation of the provisions of section 25F of the Industrial Disputes Act, 1947. The petitioner was serving as work charge clerk, as per his own case, in the office of the Executive Engineer, Roads and Buildings Department, and as such it is difficult to say whether in such matter the department can be considered 'industry' or not. However, when the petitioner is claiming some protection under the said Act, then the remedy provided under the said Act has to be availed of. Learned counsel for the petitioner does not dispute that in case the petitioner is a workman and the respondent 'industry', he could have raised industrial dispute. To agitate the point on the ground of violation of the provisions of section 25F of the Industrial Disputes Act, 1947, while terminating the services of the petitioner, the proper remedy is to raise industrial dispute and not by way of special civil application. At this stage the learned counsel for the petitioner states that he may be permitted to withdraw this special civil application. Otherwise also, looking to the facts of this case there may be many a disputed questions of facts which would arise for deciding the question of applicability of section 25F of the I.D. Act as well as violation thereof while terminating the services of the petitioner. To decide such questions of fact, oral and documentary evidence may be required to be led. Sitting under Article 226 of the Constitution of India this Court cannot take evidence. In such matters the proper remedy would have been to raise industrial dispute.

2. In the result this special civil application is dismissed only on the ground that the petitioner has a remedy of raising industrial dispute against termination of his services. In case the petitioner raises such industrial dispute in the matter, then it is expected that the State Government will not decline to make reference thereof for adjudication to the appropriate labour court or tribunal on the ground of delay as for all these years this special civil application has been pending before this court, and the same has been dismissed on the ground of alternate remedy. Subject to the aforesaid observation the petition is dismissed with no order as to costs.

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